

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the
Invasive Species/Infested Waters
Citation Issued to David Walter Fuhs;
Citation No. 178006

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Prehearing Telephone Conference before Administrative Law Judge (ALJ) Barbara L. Neilson on October 18, 2012, at 2:30 p.m. The prehearing conference was held pursuant to a Notice of Prehearing Conference and Notice of Hearing that was issued on September 20, 2012, and a letter dated September 25, 2012, rescheduling the prehearing conference.

David Walter Fuhs and Department of Natural Resources (DNR) Conservation Officer Lisa Kruse participated in the Conference. The parties agreed that no formal hearing would be needed and that the Administrative Law Judge could make a recommendation based on the record created during the Prehearing Telephone Conference. The OAH record closed on October 22, 2012, upon the receipt of additional materials from Mr. Fuhs.

STATEMENT OF THE ISSUE

The issue presented in this matter is whether David W. Fuhs was properly issued a civil citation under Minn. Stat. § 84D.13, subd. 4(1), on September 2, 2012, for transporting aquatic macrophytes in violation of Minn. Stat. §§ 84D.09, subd. 1.¹ The Administrative Law Judge concludes that Mr. Fuhs violated Minn. Stat. § 84D.09, subd. 1, on that date, and recommends that the Commissioner affirm the Citation.

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. DNR Conservation Officers are authorized to issue warnings or citations to a person who violates Minn. Stat. § 84D.09, subd. 1, by transporting aquatic macrophytes.²

2. On September 2, 2012, Conservation Officer Lisa Kruse was stationed at St. Croix Bluffs Regional Park in Washington County near Hastings, Minnesota, along with seven or eight other Conservation Officers and three watercraft inspectors. Another Conservation Officer saw the vehicle driven by Mr. Fuhs stop at a stop sign

¹ Unless otherwise noted, all citations to Minnesota Statutes are to the 2011 edition.

² See Minn. Stat. § 84D.13, subsds. 4(1) and 5(1).

before turning into the park and noticed that the drain plug was still in place in the boat he was towing. The Officer called down to Officer Kruse at the landing to tell her to check Mr. Fuhs's boat. When Mr. Fuhs arrived at the landing, Officer Kruse and a watercraft inspector conducted an inspection of his boat. They found aquatic macrophytes on Mr. Fuhs's boat or trailer and also verified that the drain plug had not been removed from his boat.³

3. Officer Kruse gave Mr. Fuhs a warning for transporting his boat with the plug in place, but issued Civil Citation No. 178006 to Mr. Fuhs for transporting aquatic macrophytes. The penalty imposed was \$100.00.⁴

4. Mr. Fuhs timely appealed the Citation. He did not dispute that aquatic macrophytes were found on his boat, but asserted that he had not used the boat since July 9, 2012, and the vegetation that was found was dead and posed no risk. He asked that the Citation be vacated.⁵

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 116.072, subd. 6.

2. The Department has substantiated the violation and Citation.

3. It is appropriate that the Commissioner affirm Invasive Species Civil Citation No. 178006 and require Mr. Fuhs to pay a \$100 fine for violating Minn. Stat. § 84D.09, subd. 1.

Based on the Conclusions, and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Natural Resources **AFFIRM** Invasive Species Civil Citation No. 178006 issued to David W. Fuhs on September 2, 2012.

Dated: November 26, 2012

s/Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

Reported: Digitally Recorded; No Transcript Prepared.

³ Testimony of Conservation Officer Lisa Kruse; Testimony of David Fuhs.

⁴ Civil Citation No. 178006.

⁵ See Sept. 14, 2012, Appeal Letter.

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6 (e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The Commissioner must send a copy of the final decision to David W. Fuhs. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63-14.69. If the Commissioner fails to act within 90 days after the record closes, this recommendation will become the final decision in this matter.

MEMORANDUM

In his letter of appeal and in his testimony, Mr. Fuhs admitted that aquatic macrophytes were found on his boat but alleged that the vegetation was dried out and dead and posed no risk of introducing or spreading invasive species. Mr. Fuhs asserted that he had last used his boat on July 9, 2012, and it had been in his garage and completely dry since that time. He stated that the Conservation Officers agreed at the time of the inspection that the piece of vegetation was dried up and dead, but chose to write a citation anyway. He pointed out that the information handed out at DNR aquatic invasive species check stations recommends that boat owners rinse boats and other equipment with very hot tap water; spray them with high-pressure water; and/or dry them for at least five days before transporting to another body of water, especially after leaving zebra mussel and spiny waterflea infested waters.⁶

Officer Kruse indicated that aquatic macrophytes were definitely found on Mr. Fuhs's trailer, but did not know their specific type. She denied that the vegetation found on Mr. Fuhs's trailer was dried up or dead, and pointed out that some invasive species can survive for a lengthy period of time out of the water. Officer Kruse also emphasized that she issued only a warning with respect to the drain plug violation.

Minnesota law generally prohibits individuals from transporting aquatic macrophytes.⁷ The term "aquatic macrophyte" is defined to mean "a macroscopic nonwoody plant, either a submerged, floating leafed, floating, or emergent plant that naturally grows in water." Mr. Fuhs does not dispute that aquatic macrophytes within the meaning of the statute were found on his boat trailer. The statute does not suggest that the prohibition applies only to vegetation that has been transported recently. Conservation Officers are given the discretion to issue citations for violations, and Officer Kruse chose to issue a citation for the macrophytes while merely giving a warning regarding the drain plug. Under all of the circumstances, it is appropriate to recommend that Citation No. 178006 be affirmed.

B. L. N.

⁶ See material attached to Mr. Fuhs's Sept. 14, 2012, letter (supplied to Administrative Law Judge on Oct. 22, 2012).

⁷ Minn. Stat. § 84D.09.
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